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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.R.1 et al., Persons Coming Under
the Juvenile Court Law.

B206983
(Los Angeles County
Super. Ct. No. CK70589)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant R.R. (Father) appeals an order of the juvenile court adjudging minor sons R.R.1 and J.R. dependents under Welfare and Institutions Code section 300, subdivisions (b) and (d). Father contends that substantial evidence does not support the juvenile court's decision. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 2, 2007, the Los Angeles Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code¹ section 300 petition on behalf of the boys, 11-year-old R.R.1 and 8-year-old J.R. alleging that Father had a history of drug abuse and had sexually abused their 11-year-old aunt A.S. (their Mother's sister) by forcibly raping her and forcing her to orally copulate him.

Mother and Father, R.R.1 and J.R. had been living with the maternal grandparents, where A.S. also resided. Mother and Father had separated in about October 2006, and Father was incarcerated on drug charges. He was released in April 2007, and moved back into the family home. Since Father moved back into the family home, he and Mother slept in separate bedrooms. Father shared a room and a bed with R.R.1; A.S. would sleep in the room at times as well, which is where the abuse occurred.

At the detention hearing on November 2, 2007, R.R.1 and J.R.² were detained and released to Mother.

R.R.1 and J.R. were declared dependent children on March 4, 2008 under section 300, subdivisions (b) and (d). The children were ordered placed in the home of Mother.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² Father was declared the presumed father of R.R.1 and J.R.

DISCUSSION

In reviewing the jurisdictional findings of juvenile court proceedings, an appellate court is limited to determining if the findings are supported by substantial evidence, contradicted or uncontradicted. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) In making that determination, a reviewing court should make all reasonable inferences from the evidence to support the findings of the juvenile court and to leave issues of fact and credibility to the juvenile court. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

On appeal, Father does not challenge the factual findings of the juvenile court – that he raped and forced A.S. to orally copulate him and that he had a recurrent drug problem. Rather, Father claims that these facts do not place his own sons at risk, and accordingly, the juvenile court erred by assuming jurisdiction over them. Father is mistaken.

1. Substantial Evidence Supports the Finding that Father's Rape and Sexual Abuse of A.S. Placed His Sons at Risk.

Section 300, subdivision (d) permits a juvenile court to assume jurisdiction over a child who has “been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in [s]ection 11165.1 of the Penal Code, by his or her parent or guardian.” Both R.R.1 and J.R. were at risk of sexual abuse at the hands of Father evidenced by his depraved behavior toward their 11-year-old aunt with whom they lived and at times shared a bedroom. The issue is whether the boys in the household are at risk of sexual abuse because a girl in the household has been sexually abused without the boys’ knowledge.

Father asks this court to adopt the holding of Division Two of this District in the case of *In re Rubisela E.* (2000) 85 Cal.App.4th 177. In *In re Rubisela E.*, the father appealed from the findings at a jurisdiction/disposition hearing and argued that, inter alia, the evidence presented was insufficient to support a finding that the minors (male and female) were described by section 300, subdivisions (b), (c), (d) and (j). The juvenile

court had sustained a petition alleging that the father had molested his oldest minor daughter. (*Id.* at p. 177.) The siblings had testified they were unaware of any abuse.

Division Two considered whether there was a substantial risk that the minor's male and female siblings would be subject to abuse. The court cited to section 300, subdivision (j). "Section 300, subdivision (j), provides that a child who comes within the following description is within the jurisdiction of the juvenile court, which may adjudge that person to be a dependent child: 'The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i) and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other [facts] the court considers probative in determining whether there is a substantial risk to the child. . . .' [Citation.]" (*Id.* at p. 197.)

The court found that "[t]he circumstances surrounding the abuse of [the minor] support a finding under section 300, subdivision (j) as to her sister. It is reasonable for the juvenile court to determine that in [the minor's] absence, Father's sexual offenses were likely to focus on his only other daughter. [Citation.]" (*In re Rubisela E.*, *supra*, 85 Cal.App.4th at p. 197.)

The other question the court considered was "whether section 300, subdivision (j) can be upheld as to the sons Sexual abuse of one's sibling can support a trial court's determination that there is substantial risk to the remaining siblings. [Citations.]" (*In re Rubisela E.*, *supra*, 85 Cal.App.4th at p. 197.) The court reasoned: "We do not discount the real possibility that brothers of molested sisters can be molested [citation] or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial, or their parents' efforts to embrace them in a web of denial." (*Id.* at p. 198.) However, in this case, the court determined, "while such a showing is possible, there has been no

demonstration by the department that ‘there is a substantial risk [to the brothers] that [they] will be abused or neglected’” (*Id.* at p. 199.)

Thus, following the *Rubisela E.* reasoning, in determining whether R.R.1 and J.R. were at risk of sexual abuse, it is vital to consider the type and manner of the abuse Father inflicted on A.S. Here, Father raped the girl, forced the 11-year-old child to orally copulate him, fondled her breasts and forced her to touch his erect penis. The incidences of rape and oral copulation occurred on a number of occasions. During the abuse, R.R.1 was asleep in the same room and on at least one occasion, was lying asleep next to Father and A.S. on the same bed.

The abuse of A.S. far exceeded anything the father in *Rubisela E.* did to his daughter. Father violated A.S.’s trust. The abuse was such that it supports the juvenile court’s finding that all minors in the same household with Father, both boys and girls, were at risk of his sexual predations. Moreover, even though, like the brothers in *Rubisela E.*, neither R.R.1 nor J.R. witnessed the abuse, the abuse occurred in the same room and on the same bed where R.R. slept. The cavalier nature of Father’s conduct placed his sons at risk.

Division Three of this District rendered a different decision in *In re Karen R.* (2001) 95 Cal.App.4th 84. In *In re Karen R.*, a mother appealed from dispositional orders declaring her children to be dependents of the court and removing them from her custody. (*Id.* at p. 86.) The oldest of the children, Karen R., was 13 years old and reported two acts of rape by force at the hands of her father. She also reported being the victim of serious physical abuse by her father, which her mother watched without coming to her aid. (*Id.* at pp. 86-87.) After one of the rapes, Karen R. came into the bedroom occupied by her younger brother and sister wrapped in a towel and told them she had been raped. (*Id.* at p. 87.) The juvenile court sustained a petition under section 300, subdivision (d), and mother contended on appeal there was no evidence her eight-year-old son was at risk of sexual abuse because of what father had done to Karen R. (*Id.* at p. 89.)

Division Three rejected mother's contention. The court first held that the son was himself a victim of sexual abuse because that term is defined in Penal Code section 11165.1 to include violations of Penal Code section 647.5. (*In re Karen R.*, *supra*, 95 Cal.App.4th at p. 89.) Penal Code section 647.5 makes it a misdemeanor to molest a child under the age of 18 and does not require that the child be touched. All that is required to violate that section is that the perpetrator engage in conduct that a normal person would "unhesitatingly be irritated by," and the conduct be motivated by an unnatural or abnormal interest in sex. (*Ibid.*) As the son had witnessed some of the physical abuse of his sister, Karen R., and had been told by her that his father had raped her, the son was himself a victim of sexual abuse within the meaning of Penal Code section 647.5. (*Id.* at p. 90.)

The court concluded: "[A] father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse within the meaning of section 300, subdivision (d), if left in the home. To the extent other cases suggest only female siblings are in substantial danger of sexual abuse after a sexually abused female sibling has been removed from the home due to sexual abuse by a father, we respectfully disagree. (Citations.)" (*In re Karen R.*, *supra*, 95 Cal.App.4th at pp. 90-91.)

In the present case, Father's conduct with A.S., who he considered a daughter, was so sexually aberrant as to justify the court's finding that his minor sons were also at substantial risk. Also, R.R.1, although not a witness to the abuse, was placed at risk of witnessing it as the abuse occurred next to him as he lay asleep.

Division Three rendered a similar decision as in *Karen R.* in *In re P.A.* (2006) 144 Cal.App.4th 1339. In *In re P.A.*, a father's conduct in sexually molesting his nine-year-old daughter was held to support the juvenile court's finding that the victim's younger brothers were also at risk of sexual abuse. (*Id.* at pp. 1345-1347.) The sexual abuse consisted of touching the daughter's vagina under her clothes, but on top of her underwear. (*Id.* at p. 1342.)

In support of its holding, Division Three cited section 355.1, which provides in relevant part that: “(d) Where the court finds that either a parent, a guardian, or any person who resides with . . . a minor who is currently the subject of the petition filed under [s]ection 300 . . . (3) has been found in a prior dependency hearing . . . to have committed an act of sexual abuse, . . . that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision[s] (a), (b), (c), or (d) of [s]ection 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence.” (*In re P.A.*, *supra*, 144 Cal.App.4th at p. 1347.) While the court in *P.A.* did not have before it a case in which there had been findings at a prior dependency court hearing, Division Three nevertheless concluded that section 355.1 evinced a legislative determination that “siblings of sexually abused children are at substantial risk of harm and are entitled to protection by the juvenile courts.” (*Ibid.*)

A.S., although not a sibling of R.R.1 and J.R., was a child their age, who lived with them, and whom Father considered a daughter. Moreover, section 355.1, subdivision (d) is not limited to protecting the siblings of sex-abuse victims. Thus, the reasoning of *P.A.* applies equally here, especially in light of the fact that the abuse perpetrated against A.S. was far more severe than the abuse perpetrated against the child in *P.A.*

We conclude that the decisions in *In re Karen R.* and *In re P.A.* support the juvenile court’s decision that Father’s rape and sexual abuse of A.S. placed his sons at risk.

2. Substantial Evidence Supports the Finding that Father’s Drug Use Placed His Sons at Risk.

Section 300, subdivision (b) permits a juvenile court to assume jurisdiction over a child who has “suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.”

Father's history of drug use placed his sons at risk as defined by section 300, subdivision (b).

According to Mother, Father's drug use was a continual problem since they met in 1996. She did not believe he was using, however, when he moved back into the family home after his three and one-half year prison term. Father admitted to using drugs since the age of 12. He stated he had never been sober for longer than eight months. At one point, he was living in his car, abusing drugs. He denied ever using drugs around the children.

Father seems to blame the rape of A.S. on his recent attempts at sobriety: "I've been dealing with [sobriety] about eight months; things just start falling apart. I don't remember this has never ever happened. I don't know if it's like a relapse; it's hard to be using and then nothing.'" "I can't think clearly. I don't know what happened. I just cracked.'" Thus, even Father drew a nexus between his drug use/attempts at sobriety and the abuse of A.S. The juvenile court had ample evidence to conclude that Father's recurrent drug use, including a history since the age of 12 and periods of sobriety lasting no longer than eight months, posed a risk to his sons.

DISPOSITION

The judgment is affirmed.

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WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.